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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,789	11/30/2001	Dorron Levy	Q66130	4578
23373	7590	06/24/2004	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			WACHSMAN, HAL D	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/996,789

Applicant(s)

LEVY ET AL.

Examiner

Hal D Wachsman

Art Unit

2857



--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1, 2, 17-21, 36-40.

Claim(s) withdrawn from consideration: 3-16 and 22-35.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Hal D Wachsman
Primary Examiner
Art Unit: 2857

1. The examiner respectfully acknowledges the Applicant's arguments made in the after-final amendment filed 6-16-04. With respect to the arguments concerning the 35 U.S.C. 112 first paragraph rejections and "the disorder indicator represents a non-designated output of said system" first it is clear that this is not stated anywhere in the specification. Second, on page 13 of the after-final amendment the Applicant states "No system is designed to output waste or disorder per se, and therefore the outputs of this type are not designated outputs". With respect to "No system is *designed* to output waste or disorder" an unclaimed merit or distinction is being argued here. In addition, as the Applicant has clearly stated that one type of waste or disorder is noise, the Examiner respectfully notes in a vehicle system for example, you can have a transducer such as a microphone that converts sounds to an electrical signal (i.e. a designated output of the vehicle system) with such a sound including a noise (i.e. waste or disorder) component generated from a rotating element in the vehicle. On page 13 of this after-final amendment the Applicant points out that the waste may be heat. Is not for example, an electric heater designed to output heat (i.e. designed to output "waste or disorder per se") ? Yes indeed, the electric heater is designed for this purpose. Thus, the "waste" being referred to here is not necessarily always a non-designated output as clearly shown above.

With respect to the arguments concerning page 10, lines 29-31, of the specification which stated "Preferably, the measurement unit uses only routine data traffic in order to gather sufficient information for regular monitoring of a disorder indicator" as it is only **routine** data traffic being used here to regular monitoring of a

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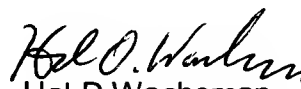
disorder indicator the fact that it is routine clearly indicates that this data (constituting the disorder indicator) constitutes therefore a designated output of the system. On page 16 of the reply the Applicant argues "In addition, the Examiner appears to allege that even if White does not teach or suggest the indicator being a non-designated output. This recitation is met by combining applicant's admitted prior art and White." However, as clearly shown in paragraph 6 of the Final Office Action, there was no combination of the Applicant's admitted prior art, either explicitly or implicitly, as claims 1, 2, 17-21 and 36-39 were rejected under **35 U.S.C. 102(b)**. As far as the arguments concerning the Examiner exercising impermissible hindsight, the following is respectfully noted:

In response to applicant's argument concerning the desirability to monitor the sound or vibration disorders based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Hal D Wachsman
Primary Examiner
Art Unit 2857

HW
June 23, 2004